IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4586 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BAI DHANI WD/O HIRA MOTI

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

Mr A.G.Uraizee, AGP,for Respondent.

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 10/04/96

ORAL JUDGEMENT

Whether the respondent State of Gujarat could exercise revisional powers under section 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act for short) when an appeal against the same order of the Competent Authority is preferred and decided, and if yes, whether the respondent State of Gujarat should be permitted to

exercise revisional jurisdiction under section 34 after a lapse of four years in view of the equities created in favour of the petitioner, are the main questions which have emerged for examination, interpretation and adjudication in this petition under Article 226/227 of the Constitution of India.

2. The aforesaid questions have arisen in the background of the following factual scenario. The petitioner No.1 Bai Dhani Hira had filed form No.1 under section 6(1) of the ULC Act. It was filed on 8.10.90 before the Competent Authority in which it was declared that she is the holder of land situated at Moje Gyaspur, Taluka City District Ahmedabad bearing survey No.228 admeasuring about 12343 sq. mtrs. The Competent Authority by his order dated 25.3.91 assessed the total holding of the petitioner No.1 Dhaniben to the extent of 12300 sq. mtrs. and treated the land as ancestral property and granted 13 units. Therefore, there was no excess vacant land.

3. The husband of the petitioner No.1, Moti Hira had expired on or around 1939-40 and by mutation entry No.762 dated 9.11.45 in the record of village form No.6, the name of the petitioner No.1 was entered as heir of the deceased Moti Hira. The disputed land is shown as new tenure land in village form No.7 and 12. The Competent Authority accepted the case that the property was an ancestral one and granted 13 units.

4. The order of the Competent Authority came to be challenged by a third party by filing an appeal No.154/93 under section 33 of the ULC Act. Before the Urban Land Tribunal (ULC Tribunal), admittedly, the petitioners were not parties. The ULC Tribunal dismissed the appeal on 14.10.93. The Tribunal held that the third party who has filed appeal has no right, title or interest in the land and is not competent to file an appeal.

5. The respondent State of Gujarat, thereafter issued show cause notice in February 1995 exercising revisional powers under section 34 of the ULC Act which is questioned by the petitioners by way of filing the petition on hand. Thus the petition is filed against the show cause notice contending that the respondent State of Gujarat has no jurisdiction to issue show cause notice in purported exercise of revisional powers under section 34 of the ULC Act when an appeal had been preferred and decided.

6. The learned counsel appearing for the petitioners

has raised the following contentions in this petition:

(1) That the respondent State of Gujarat has no power and jurisdiction to initiate proceedings under section 34 of the ULC Act after appeal under section 33 of the ULC Act is filed and decided by the ULC Tribunal;

(2) That there is unexplained and unreasonable delay of about more than 4 years on the part of the respondent State of Gujarat in initiating the proceedings of revision under section 34 of the Act;

(3) that the respondent has issued show cause notice exercising powers under section 34 of the ULC Act after the petitioners have executed agreement to sell in favour of the Co-operative Housing Society and after spending huge amount of Rs.37 lacs and the resultant construction of 79 tenements on the land in dispute.

The aforesaid contentions are challenged and traversed by the learned Assistant Government Pleader appearing for the respondent State. He has also raised the following contentions:

(1) That the respondent State has power and jurisdiction to initiate revisional proceedings under section 34 of the ULC Act in the present case;

(2) That there is no unexplained and unreasonable delay in initiating the proceedings under section 34 of the ULC Act;

(3) That there is no evidence whatsoever to show that the constructions have been made and that an amount of Rs.37 lacs has been spent and invested by Co-operative Housing Society pursuant to the agreement to sell in its favour by the petitioners.

7. The first submission as aforesaid brings into the question of application and interpretation of the provisions of section 34 of the ULC Act. Section 34 prescribes revisional powers exercisable by the State Government. Section 34 reads as under :

"34. Revision by State Government -- The State

Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Section 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

It can be very well seen from the plain perusal of the aforesaid provisions of section 34 that the Government is empowered to intervene to do justice when occasion demands it and on occasion for its exercise, the Government is made the sole judge. Thus section 34 is potential but not compulsive. It is true that section speaks only for "on its own motion". But that does not mean that the parties are prohibited from moving the Government as the Government is not compelled to take action unless it is satisfied as to the legality, validity and propriety of the order of the Competent Authority or as to the regularity of the procedure "as it may think fit". The party who moves the Government cannot claim that he has a right of appeal and revision does not lie.

8. Section 34 of the ULC Act, thus, provides ample powers to the Government for taking the matter in sou motu revision for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and pass such order with respect thereto as it may think fit after giving a reasonable opportunity of being heard to the affected parties. It may be mentioned that section 34 specifically lays down specific requirement to be followed by the State Government.

(1) The State Government may exercise on its motion the revisional powers against an order or proceedings against which no appeal has been preferred under section 12 or section 30 or section 33 of the ULC Act.

(2) It is in the interest of public justice, the provision is provided to interfere for the

correction of manifest illegality and the prevention of gross miscarriage of justice and not merely because the authority has wrong view of the law or misappreciated the evidence on the record.

(3) The State Government has to be satisfied as to the legality, propriety of the order or as to the regularity of the procedure.

It could be seen that one of the requisites for the exercise of revisional power under section 34 is that the State Government is empowered to sou motu call for and examine the record of any order passed or proceedings taken under the provisions of the ULC Act and against which no appeal has been preferred under section 12 or section 30 or section 33 of the ULC Act.

9. The first contention raised by the learned counsel for the petitioners is that the Government is not empowered to take or initiate action under section 34 of the ULC Act when an appeal was filed and decided by the ULC Tribunal. It is true that appeal No.154/93 was preferred against the order of the Competent Authority and the appeal was decided by the Tribunal by its order dated 14.10.93. It is in this context, submission is raised that revision is incompetent under section 34 and therefore show cause notice issued against the petitioners by the State of Gujarat for taking the matter in sou motu revision is without jurisdiction.

10. The aforesaid first submission may, prima facie, appears to be alluring and captivating, but not convincing and sustainable when one gets into the reality of the situation while interpreting the provisions of section 34 of the ULC Act. Reliance is also placed on the decision of this Court in the case of N.K.Mehta v. Competent Authority and Deputy Collector, Rajkot, AIR 1988 (Guj) 162 (Coram: A.P.Ravani, J. as he then was). The said decision is not applicable in the present case. It is true that revisional powers can be exercised where an appeal is not filed either under section 12 or section 30 or section 33 of the ULC Act. If appeal is filed under the aforesaid provisions, then in that case, revision would not be maintainable. The question which arises is about the intention of the Legislature. It becomes very clear from the plain perusal that if appeal is preferred and decided under section 12 or section 30 or section 33, then in that case, the same order or proceeding cannot be called in question in a sou motu or otherwise revision by the State Government under section

34 of the ULC Act. What it envisages is the appeal between the parties to the proceedings and the decision rendered thereon on merits. The statutory revisional powers of the State Government are exercisable for revision against the order or proceeding against which no appeal has been preferred under section 12, or section 30 and section 33. It cannot be construed that the expression "appeal has been preferred" is in each and every case merely by filing an appeal by anybody, the power of the State Government for revision is not exercisable. Such a narrow interpretation would lead to an absurd situation in certain cases and may also facilitate the unscrupulous litigants to prevent the State Government from exercising statutory revisional powers under section 34 of the Act. Take a case where an appeal is preferred and not decided and withdrawn, or an appeal preferred and decided on technical grounds like want of jurisdiction, locus on the part of the appellant or on any other technical ground without entering into merits. Could this be said that the literal meaning of filing of appeal is sufficient enough to prevent the Government from exercising powers under section 34 of the ULC Act. The obvious answer would be in the negative for the reasons that the Legislature has intended to provide an inbuilt mechanism whereby the State Government could call for the records and proceedings so as to satisfy itself about its regularity, legality and property against the orders of the Competent Authority.

11. There is a wholesome and healthy object and design in enacting special provision with regard to revision by the State Government under section 34 of the ULC Act which can be frustrated by any unscrupulous litigant if narrow meaning is given or attached to the expression 'where appeal is preferred". An appeal is maintainable before the ULC Tribunal against the order of the Competent Authority. Therefore, having once an appeal is filed and decided on merits by the ULC Tribunal, obviously, the State Government would be incompetent to take the matter in revision under section 34. The powers of the State Government for revision under section 34 are incorporated and designed with a view to satisfy itself about the legality, validity and propriety of the orders or proceedings before the Competent Authority when appeal is not preferred and decided by the ULC Tribunal. However, mere filing of appeal or dismissal of an appeal on technical grounds either under section 12 or section 30 or section 33 of the ULC Act will not constitute any legal hurdle or impediment in exercise of statutory powers of the State Government under section 34. In a given case, it may

happen an unscrupulous litigant who procures an illegal order from the Competent Authority and files an appeal before the ULC Tribunal and withdraws it and when the Government tries to take the matter in a revision under section 34, could such an unscrupulous person be allowed to be heard that revision is incompetent in view of the fact of filing of appeal. Or it may also happen that somebody instigates a third party to move an appeal and get an order on merits even though he has no locus to file an appeal. Could, in such a situation, be said that there is a bar in taking the matter in revision under section 34 ? The obvious answer would be, no. Therefore, the contention that third party had filed the appeal and the appeal is decided and therefore the revision is not maintainable cannot be accepted. It is found by the ULC Tribunal that the third party who had filed had no locus standi. Could it be conceived for a moment in such a situation that the party should be allowed to contend that merely because an appeal was preferred by somebody, may be at the instance of the unscrupulous litigant, that revision is incompetent under section 34 of the Act ? Obviously not. The underlying purport and design of the provisions of section 34 of the ULC Act is to arm the State Government for revision against the orders of the Competent Authority, if it is satisfied or if it is found that there was illegality or manifest injustice. It cannot be construed other way around.

12. Of course, aforesaid cases are illustrative in nature. Statutory provisions of section 34 could not be allowed to be defeated by ingenuous method by crafty litigant who has secured an order from the Competent Authority and who would like to perpetuate the said order by filing a colourable and sham or shadow appeal by self or through other persons. However, it would not be possible to illustrate and identify the cases wherein a bar would be created or not. Notwithstanding that, at least in the following category of cases bar can never be created in exercise of statutory revisional powers under section 34 of the ULC Act:

(1) A sham appeal managed to be filed by the litigant through somebody, which may ultimately be dismissed on the ground that the appeal is not maintainable.

(2) An appeal filed by a third party before the ULC Tribunal which may not go into the merits of the case and may dispose of the appeal on technical grounds;

(3) An appeal managed to be filed by an unscrupulous litigant through some agency by making a show of filing of appeal, but in reality it may be a bogus or illusory appeal;

(4) The appeal should not be a moonshine, but it should be really a sunshine;

(5) An appeal filed beyond the period of limitation and the appellate authority deals with it at the threshold on the ground of delay and laches;

(6) An appeal filed by the litigant himself with a view to defeat the provisions of section 34 which is ultimately withdrawn by him.

Many such other contingencies and cases where the real purpose is not to file an appeal and if filed not get it adjudicated upon on merits.

13. The aforesaid aspects are illustrative and not exhaustive. It would not be possible to enumerate exhaustive grounds as it depends upon the variety of circumstances. Reliance placed on the decision of this Court in the case of N.K.Mehta (supra) is of no avail to the petitioner in the present case. It may be mentioned here that in the case before this court in that matter, different question was placed on the focus. Therein, there was no question of interpretation of the expression "no appeal has been preferred under section 12 or section 30 or section 33". The main question before this Court in that matter was about the powers under section 33 and 34 of the ULC Act. Reliance placed on the observations made in para 18 of the judgment is also of no avail to the petitioners. Those observations are obiter and therefore they would not assume or constitute a binding effect in such a case before a concurrent Court. The scheme of the Act appears to be that the orders passed by the Competent Authority may not become final at the level of the Competent Authority only. Even the orders which are appealable under section 12 or section 30 or section 33 of the Act and against which appeal is not preferred are subject to revision by the State Government under section 34 of the ULC Act. The provisions go to show that the order passed by the Competent Authority is subject to scrutiny either by the Appellate Authority under section 33 or in absence of any appeal by the Revisional Authority under section 34. It is true that the appellate authority exercising powers under section 33 and the Revisional Authority under section 34 of the

ULC Act are almost identical in the width of powers. The object of keeping check on the powers exercised by the Competent Authority is sought to be achieved by making almost similar provisions under section 33 and section 34 of the ULC Act.

14. In view of the facts and circumstances, the first contention raised on behalf of the petitioners cannot be accepted. In the opinion of this Court, in the light of the factual scenario narrated hereinbefore, the appeal filed by the third party cannot be said to be an impediment in exercise of powers of revision under section 34 by the State Government. Therefore, the initiation of proceedings and the resultant impugned show cause notice issued to the petitioner cannot be said to be without jurisdiction.

15. Since this Court has found that the issuance of show cause notice could not be said to be without jurisdiction, ordinarily, the party should be relegated to the stage from which the challenge came by way of this petition. However, in view of the peculiar facts and circumstances emerging from the record of the present case, this Court is inclined to entertain the petition even against the show cause notice though it is not without jurisdiction. The impugned order of the Competent Authority was recorded on 25.3.91 and the show cause notice for the contemplated proceedings of revision under section 34 came to be issued on 13.2.95. Thus, there is delay in taking the matter in sou motu revision for more than four years. Prima facie, this is a long delay in taking the matter in sou motu revision. It is true that in a given case, the State Government may justify the invocation of revisional powers wherein delay is involved if there is a justifiable factual situation. In other words, if the facts and circumstances demand, revisional power may be exercised. However, in the present case, the factual situation is different. Not only that there is delay of more than four years, but during the intervening period of more than four years, the petitioners have spent huge amount and have made investment in raising the dwelling units. Therefore, on the ground of delay and equity created in favour of the petitioners, it is rightly submitted that the show cause notice should be quashed.

16. The following facts which are relevant and material have remained uncontroverted:

(a) The petitioners entered into an agreement to sell the land to the society;

(b) The society was registered on the basis of possession of the land from the petitioners.

(c) The society entered into an agreement to develop the land in question and for that purpose entered into an agreement with the builder.

(d) Enormous amount of money has been spent by the society in developing the land and thereafter 79 tenements have been constructed on the said land.

(e) Some of the members have already started residing in the tenements which have been constructed on the land in question;

(f) Good amount of money has been spent in obtaining electric connection, telephone connections and towards miscellaneous expenses.

(g) Internal roads of the society and approach road linking the highway are constructed;

(h) Compound wall is constructed on all the four sides of the society spending large sum of money;

(i) all other activities required for the purpose of making the surrounding habitable have already been undertaken.

17. The contention is raised by the learned Assistant Government Pleader that as the appeal was filed, the delay has occasioned in taking the matter in sou motu revision. This submission may, prima facie, appear to be captivating, but not convincing. Firstly, the appeal was not filed by anyone of the parties to the proceedings before the Competent Authority. Secondly, the appeal came to be filed 30 months after the Competent Authority decided the matter on 25.3.91. The appeal was filed on 14.9.93. There is nothing on record to account for satisfactorily the period of 30 months. Not only that, the appeal came to be decided on 14.10.93. Thereafter also, no action was initiated under section 34 for a spell of 16 months. In cases where the order of the Competent Authority is in favour of the holder of the land and the same is operating for a period of about 15 months or more, the holder of the land would be justified in assuming that the order of the Competent Authority holds the field and he would also be justified in dealing with the lands on the supposition that the order of the Competent Authority has become final. In the present

case, the land holder has transferred the land to a Housing Society. In turn the Society has also entered into an agreement to develop the land in question and for that entered into an agreement with the builder. The society has spent huge amount towards the investment in constructing the tenements. 79 tenements have been constructed on the said land during the intervening period. some of the members of the Society have also started residing in the said tenements which have been constructed on the land in question. Compound wall is also constructed on all the sides. The internal roads of the Society linking the highway are also constructed. In view of the aforesaid factual scenario, the exercise of revisional powers under section 34 of the ULC Act would be improper and unjust. Serious prejudice is caused on account of the belated exercise of powers. Therefore, the impugned action of issuing show cause notice for purported exercise of power under section 34 of the ULC Act is unreasonable. In this connection, reference may be made to the decision of this Court in the case of Jayantilal K. Shah v. State of Gujarat & anr., 1994(2) GCD 83. The ratio of the said decision fully supports the view of this Court. The said decision is also followed by this Court in Mansukhlal G. Kaneria v. State of Gujarat, 1995(1) GLH 264.

18. It is, therefore, very clear from the aforesaid proposition of law that sou motu exercise of power under section 34 of the ULC Act should be exercised within reasonable period of time. If such power is exercised after expiry of unreasonable long period and during such intervening period transfers are made and interests are alienated and equities are created and huge investments are made, exercise of such power in such cases would be unreasonable, unjust and unsustainable. So is the factual scenario in the present case. In the circumstances, the impugned show cause notice is required to be quashed and set aside by allowing this petition.

19. In the result, the petition is allowed. The impugned show cause notice for the contemplated exercise of powers under section 34 of the ULC Act is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

.....